

MEMORANDUM

April 9, 1980

Yesterday a hearing was held at Richfield presided over by Don Norseth and Stan Adams. The Upper River Commissioner and Scott Smith were in attendance and furnished information concerning this particular problem. Attached are copies of minutes of the Circleville Irrigation Company which were furnished by Scott Smith.

I checked the Findings of Fact in the Morse Decree at the Court-house in Richfield. I found that .25 cfs to Dobson and .62 cfs to Whittaker was provided for in the Findings of Fact. I did not follow through to see if the same provisions were in the Decree. However, this did convince Mr. Fick that a claim to any more primary water than .25 cfs was just not warranted and that all documents prior to the date of such findings claiming more than that had been disposed of in the Morse Decree litigation.

Based on the signed 1935 agreement referred to in other memoradums and the statement in the 1950 river report by Commissioner LaRue Ogden that the water had been administered, each were in accordance with such unsigned agreement, all parties agreed that an Order should be issued providing as follows:

1. That Fick should be awarded .25 cfs primary right which is not subject to pro-ration with Circleville Irrigation Company or any other rights. I am not certain whether such right would be pro-rated with the successors in interest of the Whittaker right in the event of shortage.
2. That Fick and the Whittaker right have a third class right of 1.39 cfs to be divided in accordance with their acreage, i.e. approximately 75% or 29%.
3. Circleville Irrigation Company and the owners of the Whittaker right have apparently been administering an unauthorized exchange, i.e. an amount of water representing a specified number of shares of the Circleville Irrigation Company have been added to the stream being delivered to the Whittaker right and the Fick right so that instead of .87 cfs, 1 cfs is in the stream. Therefore, instead of three (3) days and seven (7) day turns, the turns have been changed to three (3) days and ~~six~~ (6) days. The Upper River Commissioner and Scott Smith are to obtain all of the facts concerning this unauthorized exchange and Don Norseth is to authorize such exchange on a permanent basis as a part of the Order which will be issued.

TIME SPENT 4/8/80 - 6 hours

Roger's total fee - \$200.00

Mileage - 180 miles at 40¢ per mile

Time spent from February 7 to April 7, inclusive - 1½ hours

Time spent April 9, 1980 - ½ hour

Estimated time to complete after receiving Order & additional correspondence
½ hour

38
95-
99-

1.28

a special meeting was held in Auditorium of the Board of Directors of Circleville In. Co, and the Loss creek In. Co. Aug 9th 1935. The purpose of the meeting was to determine the rights of the parties concerned in the McCarty & Morse decree. The water commissioner, Mr. Lem Ogden was present and discussed the rights of the parties, viz, Circleville In. Co; Loss Creek In. Co. Max Parker, James Whittaker, Thos Dobson et al. (Chalker, O.B. Cannon & Nolan Dobson also present).

91 second feet water for Circleville divided as follows. Divided in to 3600^{ft} viz figures by L.W. Jones

Circleville In. Co	$\frac{2850}{3600} = 70.76$	Second feet
Loss Creek " "	$\frac{390}{3600} = 9.68$	" "
E.A. Thompson & Maki	$\frac{288}{3600} = 7.15$	" "
M-M. Steele & Co	$\frac{72}{3600} = 1.79$	" "
	$\frac{89.38}{3600}$	

J.C. & Arthur Whittaker $\frac{40}{65} = .615$
 Max Parker 1.00

Total 90.995^{ft} Sec. feet
 James Whittaker (Douglas & Cannon) .62 Sec feet
 Thos Dobson 25 Sec feet - .50 Sec feet High water.
 under the proposed stipulation dated Feb 20th 1931. The following data is copied from the copy in hand of Mr Ogden.

South Fork of Sevier River, Piute Co.
 Sec. B. Primary Rights
 Circleville In. Co. Loss Creek In. Co. J.C. Whittaker
 Arthur Whittaker, Max Parker, Geo B Horton
 & State of Utah: To be diverted out of the South

fork of the Sevier River, with period of use
from April 1st to Nov 15th 91.25 CFS.

And to the same parties; To be diverted out
of the South Fork of the Sevier River, with
period of use from Nov 15 to April 1st 30 CFS.

South Fork of Sevier River, Kinte Co.

Second Class Rights.

Ex. In. Co. Lows Co. In. Co. J. C. Whittaker
Arthur Whittaker, W. Parker, Geo B. Horton &
State of Wt. To be diverted out of the South
of the Sevier River, with period of use from
April 1st to Nov 15th 32.50 CFS

South Fork of Sevier Kinte

3rd class Rights

Ex. In. Co. Lows Co. In. Co. J. C. Whittaker
Arthur Whittaker, W. Parker. Geo B. Horton
& State of Wt. 30. CFS

And to Whittaker, Brothers & Lows. Thos.

Borhon

50 CFS.

To be diverted out of the South Fork of Sevier
River, with period of use from April 1st to
Nov 15th

Discussion was over the Parker water; also Douglas
& Cannon water; also the Dobson water

Arthur made a motion, second by Reynolds
that temporary agreement be made to give
Thos Parker 75 feet of water

D. Cannon 62 " " " "

Thomas Dobson 25 " " " "

Motioned was put before House by Thos Smith

and carried unanimously. This pro rata was to take effect after July 1st.

Arthur Whittaker motioned the meeting be adjourned
~~J. W. Smith~~

A special meeting of the board of directors of Birchville Inc. Co. and Loss Creek Inc. Co. held at residence of Arthur Whittaker Sept 18-35. The business before the boards was to discuss application of the underground water; to file claim on the underground water. It was mutually agreed that the pump be started and run during the day. Arthur Whittaker made a motion that the pump be run on the diatlate town on hand to determine the amount of water the pump will throw out. Geo. Norton was authorized to start the well.
 J. W. Smith

a director's meeting held at Residence of Arthur Whittaker Inc. Co. Dec 6 1935 for the purpose of levying assessment on all the stock. The amount to be raised to pay for the indebtedness of the company. The company owes:
 Tom E. Peterson \$65.⁰⁰ (his salary set at \$110.⁰⁰ for season of 1935) due State Engineer Office a Bal of \$113.⁸²;
 Richfield Comm'l Bank note of \$500.⁰⁰ A. O. Smart \$10.⁰⁰
 a total of \$718.⁸²; It was motioned by Geo. Wiltshire that a 12 cent share be levied on all the capital, seconded by J. W. Smith, and that the same be payable at once, and all delinquent assessment after Jan 6th 1935 be

July 26
1900

Meeting of the Board of Directors at the office of the Secretary July 26 1900.

Meeting called to order by M. D. Morgan

All the members of the ^{Board} were in attendance

The object of the meeting was to decide on what was to be done about Thos. Dobson making use of water out of the river and Jas. H. Dalley using the entire stream in Pine Creek.

The matter was soon decided by vote that Mr. Dobson was entitled to the use of a small stream sufficient to flow in 3 or 4 rows one do of 24 hours once in every ten day. This it was considered would give him an equal chance with other stockholders in the company James H. Dalley was to have no more use of the water but from his ditch the water would be turned and be allowed to flow in its natural channel down what is known as Pine Creek and that here forth it should be molested by no one.

Notices to this effect were to sent each of the parties named.

In as much as some parties, namely Elmer C. No and Mrs. M. A. Mangum had failed to pay up the cash assessment on their water and in consequence of which a portion of their water was bought into the company it was decided that a usual price of 50¢ per share should be allowed for the water bought. Meeting Adjourned.

A. C. Dalley Sec.

1909

Jan 15 balance of \$39.37 from the assessment, in the Treasury with which to pay any expenses that may come during the ensuing year of 1909. (Assessment was levied upon 3119 shares @ $2\frac{1}{2}\%$ cash - \$327.97 - Less Expenses \$288.60 - Bal \$39.37. and leaving a balance of \$500.00 on note still due Whittaker Bros as ordered to remain unpaid, as to extend leniency to the stockholders, owing to the stringency & depression of money matters, at the present time.

Ordered that the aforesaid assmt of $2\frac{1}{2}\%$ cash & $2\frac{1}{2}\%$ labor total 5% share be levied upon the capital stock of the corporation, payable to Lucien Fullmer, Secy & Treas. of the said corporation, at his office in Circleville, Ohio Co. Alt. on or before Feby 15 - 1909.

Any stock upon which said assessment may remain unpaid on Feby 15 - 1909 will be delinquent and advertised for sale at public auction, and unless payment is made before March 8 - 1909, will be sold at public auction to pay delinquent assessment, together with costs of advertising & expense of sale.

It was ordered that waters decreed by the C. W. Morse Decree to parties in Circleville, be separated and a statement be sent to the clerk of the District Court at Richfield, showing the percent owned by each of the parties, so that said clerk can send a statement of Court costs to the respective parties instead of having Circleville Irrigation Co.

09
Jan 15

make the collection, that said rights be divided as follows:

To Max Parker - One Second Foot.

To J. C. & Arthur Whittaker - $4\frac{0}{65}$ of one second foot.
and $89\frac{25}{65}$ Second feet divided as follows:-

Circleville Irrigation Co.	12850	of $89\frac{25}{65}$ sec. ft.
Post Creek	3600	
E. A. Thompson	390	
Mr. M. Steele	3600	
	72	
	3600	

(288/3600)

Ordered that the Circleville Ir. Co. Board wait upon the parties concerned for their signatures to the above statement.

Order that the Secy make settlement with Max Parker for chain borrowed from him by the Co, and lost in river.

Minutes read and accepted.

Loring Fullmer, Secy, Treas & Director
George Horton Pres.
George H. Whittaker
Arthur Whittaker

1909
Nov 28th A special meeting of the Board of Directors, called by Pres. Geo. Barton for the purpose of having Gilbert R. Beebe, who was attorney for Circleville Irr. Co., Lost Creek Irr. Co., et al., making out the exact percentage that each company and private party in the suit of Richfield Irr. Co. vs. Circleville Irr. Co., et al., under the U. S. Morse Decree, is to pay for their pro rata of the River Commissioners Salary. There were, Geo. Barton, Arthur Whittaker, Geo. Whittaker and Orrin Fullmer, of the Board of Directors present, also G. R. Beebe the attorney.

Mr. Beebe gave us the true and correct amts pro rata, as follows, viz: -

In Free with District Court, State of Utah, County of Sevier.

Richfield Irrigation Co., et al.

vs

Circleville Irrigation Co., et al.

} Stipulation

That the undersigned names & companies hereto, are owners and users of Waters of the Sevier River, and are liable for indebtedness accruing, under the U. S. Morse Decree, the amts set opposite their respective names, viz, divided into 3600th.

Max Barker - One Second Foot.

James Whittaker, by Arthur & G. Whittaker $\frac{40}{360}$ of one second foot

Leaving 9th Second feet & $\frac{25}{360}$ of one sec. ft. to be divided as follows.

Circleville Irrigation Co.

$\frac{2850}{3600}$

Lost Creek " "

$\frac{390}{3600}$

E. A. Thompson

$\frac{225}{3600}$

Mr. W. Steele

$\frac{72}{3600}$

This stipulation is intended & does cover the amt of 9th sec. ft. in said decree.

Orrin Fullmer Secy

WILMA R. AMES
P.O. BOX 134
CIRCLEVILLE, UTAH 84723

The recorded water readings
for 1979 for all
water users from
Junction Middle Ditch
to Bear Creek IRRIGATION
CO., including
Marshall Ditch
AND MEERS (by
INDIVIDUALS)

577-2511

*Copy Decree
Pg. 8.*

AGREEMENT

At 7:30 P. M. August 9, 1935 a meeting was held in the Office of Mr. Crane, Agricultural School Teacher at Circleville, Utah.

The purpose of the meeting was to make an agreement between the interested parties which would show the ownership of the 91.25 second feet of water which is stipulated as belonging to the users in Circlevalley in those certain Stipulations entered into Feb. 20, 1931 in the case of RICHLANDS IRRIGATION CO. et al -vs- WEST VIEW IRRIGATION et al in which said stipulations the above mentioned water was not sub-divided between the users in Circlevalley.

Those present at the meeting were Tom Smith, W. E. Betensen, Arthur Whittaker & Loring Whittaker of the Board of Directors of the Circleville Irrigation Co., Wes Reynolds, John Bulkley and James L. Whittaker of the Board of Directors of the Loss Creek Irrigation Company, Eb. Parker representing the interests of Maxmillian Parker, Dug Cannon, representing the interests of Hazel W. Cannon, Nolan Dobson, George B. Horton and J. Lerue Ogden, Sevier River Water Commissioner.

At this meeting a general discussion of the water rights of the Valley was had. J. Lerue Ogden led a discussion of the Mc Carty Decree, the Morse Decree, the State Engineers determination and the Stipulations of Feb. 20, 1935 of the RICHLANDS IRRIGATION COMPANY -vs- THE WEST VIEW IRRIGATION COMPANY et al as they affected the water rights of the Circle Valley district. Also, a former agreement made about 1909 when Lewis W. Jones was Sevier River Water Commissioner was brought to light and much discussion was indulged in across the table.

And it was finally unanimously agreed as follows:

That until someone or more of the interested parties decided to take some action the rights to the use of water by these parties are as shown below and that the Sevier River Water Commissioner is hereby instructed and empowered to divide the these waters as shown below, and that the water assessments made by the State Engineer in the usual manner shall be computed on the basis of the following:

Max Parker 1.00 c.f.s. to July 1st of each year and 0.75 c.f.s. after July 1st. 1.00 c.f.s.

Heirs of Thomas Dobson - - - - - 0.25 c.f.s.

Hazel W. Cannon, successors to J. C. & Arthur Whittaker - - - 0.62 c.f.s.

The above three rights not to prorate with other users as the Sevier River stream decreases.

Circleville Irrigation Company 2850/3600 of the balance - - - 70.76 c.f.s.

Loss Creek Irrigation Company 390/3600 of the balance - - - 9.68 c.f.s.

State Land Board, succeeding E. A. Thompson 288/3600 of the balance 7.15 c.f.s.

George B. Horton, Succeeding M. M. Steele 72/3600 of the balance 1.79 c.f.s.

Total - - - - - 91.25 c.f.s.

That the additional water stipulated as belonging to these users as secondary and winter flow rights be divided in the same basis or manner as the above rights are divided.

That this agreement is only temporary in its nature and that it will not be prejudicial in its nature either for or against any of these water users at any time when a discussion of the right to the use of the above waters is being held and that it cannot be used as a basis for the ownership of these waters whenever a determination of these rights shall be further agreed upon.

We the undersigned hereby certify that the above statement represents our understanding of the agreement entered into at Circleville, Utah, on August 9, 1935.

J. Lerue Ogden

Sevier River Water Commissioner

A copy of this agreement was served upon Wes. Reynolds, President of Loss Creek Irrigation Company, Tom Smith, President of Circleville Irrigation Company, W. E. Betensen, Board Member of Circleville Irrigation Company, Eb. Parker, Hazel Cannon successor to J. C. and Arthur Whittaker, George B. Horton and others who admitted to me that it represented the agreement made at the meeting described in the agreement, but who represented that they did not care to sign it at that time.

J. Lerue Ogden

Sevier River Water Commissioner.

January 10, 1950

The Sevier River Water Commissioner and his agents, gatemen appointed by him, have divided the water and the State Engineer has levied the assessment, according to the division as set out in the agreement just quoted above from the date of said agreement, viz- August 9, 1935, to the present time.

Signed: J. Lerue Ogden
Commissioner

FROM THE DESK OF

Stanley Green

Rick —

This is a copy of memo
from Thorpe re a distribution
problem by Lriceville. No
decision was ever made
although the conditions are
set out in the memorandum.
Stan has the details.

A stylized, cursive handwritten signature that appears to read "Stan".

Raymond Fick.